IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1608 OF 2006

Mr.Sameer R.Shah & Ors. .. Petitioners.
Vs.
The State of Maharashtra & Anr. .. Respondents.

Mr.P.D.Prasad Rao for the petitioners.
Mr.S.V.More A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 3RD AUGUST, 2006

P.C.:

. Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. This petition is directed against the order dated 19.7.2006 passed by the Metropolitan Magistrate, 26th Court, Borivali, Mumbai rejecting the application filed by the petitioner-accused for production of the mobile bills of cell numbers mentioned in the application to know the incoming and outgoing calls on those numbers from M/s.BPL Mobile Communication Ltd. and M/s.Hutchson Essar Ltd. The application was filed to mainly bring on record the conversation, as alleged between P.W.1 and one Shailesh Pednekar. The learned Magistrate rejected the said application by making the following observations in paragraph 4 of the order:

> "4. I have gone through the evidence adduced by P.W.No.1. He has some times denied that there was conversation, sometimes deposed that he might have called on those telephone numbers. It is also the evidence adduced on record that the mobile phone is of the company and it is handled by so many persons in the company. Therefore, even if the record of the telephone company is called out it will at the most prove the only fact regarding conversation of that company telephone to the telephone alleged to have been owned by Shailesh Pednekar and A.C.P. The telephonic conversation is not recorded. Therefore, it will be difficult to establish even if the record is called, that as to who has called whom on which particular call as it is a fact establish on record that mobile phone is owned by the company and it is handled by so many persons and therefore, the information sought to be called by the accused is unnecessary".

3. I was taken through some part of the cross examination of P.W.1 by the learned advocate for the petitioners. From perusal of the cross examination on page 70 to 72 of the paper book and some other part of the cross examination I am satisfied that this order shall not cause any prejudice to the petitioners at this stage. It would be open for the petitioners, if he so desires, to examine a person from the mobile companies as his witness to establish that cell numbers mentioned in the application stand in the name of P.W.1 and not in the name of company and that P.W.1 had conversation with Pednekar during February to June, 2002. In the result this writ petition is dismissed.

(D.B.Bhosale, J.)